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No. 90-346

Supreme Court, U.S.

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IN THE

Supreme Court of the United States

October Term, 1990

TOLEDO POLICE PATROLMAN'S ASSOC., LOCAL 10, I.U.P.A.;
CHARLES R. NEARHOOD; DAVID M. O'BRIEN,
On Behalf of Themselves and all other
persons similarly situated,
Petitioners,

vs.

CITY OF TOLEDO; DONNA OWENS, MAYOR; GENE COOK,
VICE-MAYOR; CARTY FINKBEINER; LINDA FURNEY;
PETER UJVAGI; MARK PIETRYKOWSKI; STEVE
YARBROUGH; JUDY JONES; MAX REDDISH; C.E. RISER;
PHILIP HAWKEY, CITY MANAGER; JOHN MASON, CHIEF
OF POLICE; SGT. FRANK STILES; and SGT. RONALD
NAVARRO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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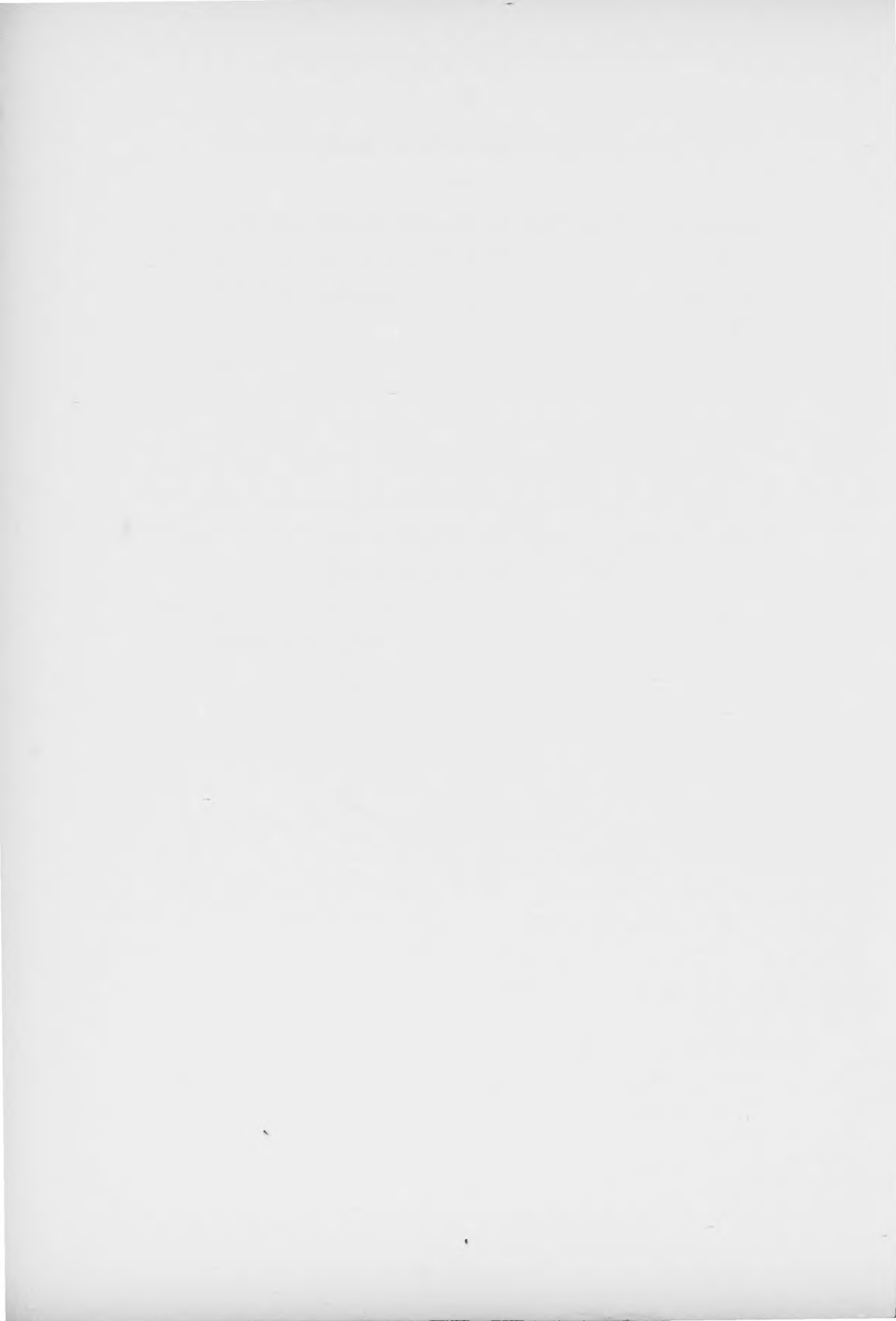
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10, I.U.P.A.; CHARLES R. NEARHOOD; DAVID M.
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CHIEF OF POLICE; SGT. FRANK STILES; and
SGT. RONALD NAVARRO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case arises in an employment context. Petitioners, Charles Nearhood and David O'Brien and Respondents, Frank Stiles and Ronald Navarro, are all police officers employed by the City of Toledo, Ohio.

Petitioners are patrol officers who, on the evening of September 3, 1986, had been assigned to patrol an area of the City of Toledo where an individual was seriously assaulted. See App. pp. A7-A8. Respondents are Police Sergeants who were assigned to investigate the assault. See App. pp. A3-A4, A7.

During the course of the investigation, on September 24, 1986, it was determined by Deputy Chief Raymond Vetter, (Chief Vetter was not made a party to this lawsuit) that it was necessary to immediately interview all police wagon crews who had been on patrol the night of the assault, including the Petitioners. See App. pp. A4-A5.

Petitioners were not scheduled for regular duty shifts for two more days, and Chief Vetter determined that questioning about the incident could not be delayed for that length of time. See App. pp. A9-A10. Respondents, Sergeants Stiles and Navarro, were ordered to remain on duty the evening of September 24, 1986, beyond their own regular duty hours, for the purpose of interviewing the wagon crews. See App. p. A8.

There is no dispute in this case that on-duty officers could have been ordered to report immediately for questioning and during the course of trial in this case, Petitioners acknowledged that, as police officers, they are subject to recall to duty twenty-four (24) hours a day. See App. pp. A12-A13, A17.

Respondents drove to Petitioners' respective homes during Petitioners' off-duty hours and relayed the order for them to come immediately to police headquarters. See App. pp. A10-A11. Once there, Petitioners were interviewed regarding any information they might have had concerning the area where the assault had occurred.

After the interview, Petitioners returned to their homes. Other officers were also questioned the same evening. See App. pp. A5-A6.

No criminal charges or administrative charges were ever brought against the Petitioners. They received overtime pay for the hours involved in the transportation to police headquarters and the subsequent interview. See App. pp. A14-A15, A18.

Petitioners subsequently filed this lawsuit against the Respondents and others, in the United States District Court for the Northern District of Ohio, Western Division. A jury trial was commenced on Petitioners' claims under 42 U.S.C., Section 1983, for alleged deprivation of liberty without due process, and under Ohio state law, for alleged false arrest.

At the conclusion of Petitioners' case, the District Court directed a verdict for all defendants except Respondents. See Pet. App. pp. A28-A34. The jury found that Petitioners had not been unlawfully or falsely arrested under state law. See Pet. App. p. A13. The District Court granted Respondents' motion for judgment NOV on the issue of qualified immunity in regard to the jury's verdict on the Section 1983 claim. See Pet. App. p. A18. The Court of Appeals for the Sixth Circuit affirmed the decision of the District Court in all respects. See Pet. App. pp. A1-A9.

SUMMARY OF ARGUMENT

The Respondents' Petition for a Writ for Certiorari should be denied for two reasons.

The first reason is that the Sixth Circuit Court of Appeals decided no new question of federal law in this case nor did its decision raise any special or important federal issue, sufficient to warrant review by this Honorable Court.

The Sixth Circuit Court of Appeals' decision was premised squarely on the application of existing case law, principally *Monell v. Dept. of Social Services of the City of New York, et al.*, 436 U.S. 658 (1978), *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and *Anderson v. Creighton*, 483 U.S. 635 (1987).

The second reason that Respondents' Petition should be denied is that both the District Court and the Court of Appeals correctly applied the law, as set forth in *Monell*, *Harlow* and *Anderson, supra*, to the facts in this case.

Petitioners have set forth no policy reason, pursuant to Supreme Court Rule 10, to justify review of this case on writ of certiorari and the Petition, therefore, should be denied.

ARGUMENT FOR DENYING THE WRIT

The District Court and the Court of Appeals quite properly viewed the interview of Petitioners, Nearhood and O'Brien, as a component of the employer-employee relation which police officers have with the department they serve. Petitioners claim that then-Police Chief John Mason's testimony with regard to such questioning established an illegal "policy or custom" under *Monell v. Department of Social Services of the City of New York, et al.*, 436 U.S. 658 (1978). Mason testified, in relevant part:

"I think it is inherent in the responsibility of the law enforcement organization and their rights to conduct the business of that association that they have—the administration has the authority to compel a police officer to report to the station house, answer questions, submit to an interview or interrogation with regards to his performance of duty." See App. p. A2.

In evaluating this testimony, the Sixth Circuit Court of Appeals correctly observed:

"[P]olice officers may be called to duty at any time, and, as a part of that duty, may be questioned about their activities. Such questioning, absent more, is certainly not illegal, and is consistent with the duties of a police officer. Even assuming that Mason's statement does create a city policy, any illegal action allegedly committed by Stiles or Navarro (such as a failure to give a *Miranda* warning) is not explicitly within this policy as stated by Mason. Thus, viewing the evidence in the light most favorable to the [Petitioners], and giving them the benefit of all reasonable inferences, we find that the district court did not err by directing a verdict for Mason, the City of Toledo, and the named city officials." See *Pet. App.* at p. A6.

Even apart from Mason's statement, there is simply no evidence in the record of any illegal "policy or custom" under *Monell* which could entail liability for Mason, the City of Toledo or the other City officials in whose favor the District Court directed a verdict during the course of the trial.

Petitioners further contend that the lower courts erred in concluding that the actions of Respondents, Sergeants Stiles and Navarro, were protected under the qualified immunity doctrine. See, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Poe v. Hayden*, 853 F.2d 418 (6th Cir. 1988); *Dominique v. Telb*, 831 F.2d 673 (6th Cir. 1987).

In *Poe v. Hayden*, *supra*, the Sixth Circuit Court of Appeals summarized the rules regarding the qualified immunity doctrine, which apply here:

"Government officials performing discretionary functions are afforded qualified immunity, shielding them from civil damages, as long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known' *Harlow v. Fitzgerald*, ***. Thus, whether an official 'may be held personally liable for an allegedly unlawful official action generally turns on the "objective legal reasonableness" of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken. *Anderson v. Creighton*, _____ U.S. _____, 107 S.Ct., 3034, 3038, 97 L.Ed. 2d 523 (1987). (citations omitted)." *Id.* at 423.

The evidence in the record establishes that Petitioners were not arrested, and the lower courts, reviewing this evidence, also concluded that no arrests occurred. See, Pet. App. pp. A8, A17. However, even if the Petitioners' transportation to and questioning at

police headquarters had been construed as a custodial detention, Petitioners' *Miranda* argument fails to breach the qualified immunity defense. The failure to render a *Miranda* warning is *not* an independent constitutional tort. Instead, a *Miranda* violation gives rise to the exclusionary rule and suppression of incriminating statements in a subsequent criminal prosecution. See, *Warren v. City of Lincoln, Neb.*, 864 F.2d 1436, 1442 (8th Cir. 1989); *Miranda v. Arizona*, 384 U.S. 436 (1966). Similarly, a procedural violation of a municipal code section or a breach of a collective bargaining agreement does not equate to a violation of a constitutional right. See *Hawks v. City of Pontiac*, 874 F.2d 347 (6th Cir. 1989).

This Court's holding in *Anderson v. Creighton*, 483 U.S. 635 (1987), requires any alleged "rights" which Petitioners claim were violated to have been "clearly established" at the time the allegedly wrongful acts were committed. See, *Anderson*, 483 U.S. at 639-40; see also, *Danese v. Asman*, 875 F.2d 1239 (6th Cir. 1989). Such rights must be "particularized" in a fact-specific context, not general in nature like the right to "due process of law." *Danese*, 875 F.2d at 1242. As applied to Respondents Stiles and Navarro, the test is:

"[W]hether a reasonable officer could have believed [his conduct] to be lawful, in light of clearly established law and the information [he] possessed." *Id.* at 641.

This *objective* test is not retrospective; rather, it requires an analysis of the facts as faced by Respondents and a consideration of the pertinent law as it then existed. *Anderson*, 483 U.S. at 641. The District Court evaluated all the circumstances surrounding the questioning of Petitioners and found that Respondents

did not violate "clearly established" rights. See, Pet. App. p. A17. In fact, as to the clarity of the rights allegedly violated, the trial court ruled:

"[T]he issue of when and how police officers can be compelled to participate in a criminal investigation in the employment context, as distinguished from their constitutional rights, is anything but clear. *** The contours of the rights allegedly violated are not sufficiently clear that [Respondents] would understand objectively [their] conduct in this case to have violated [Petitioners'] rights." See Pet. App. p. A18.

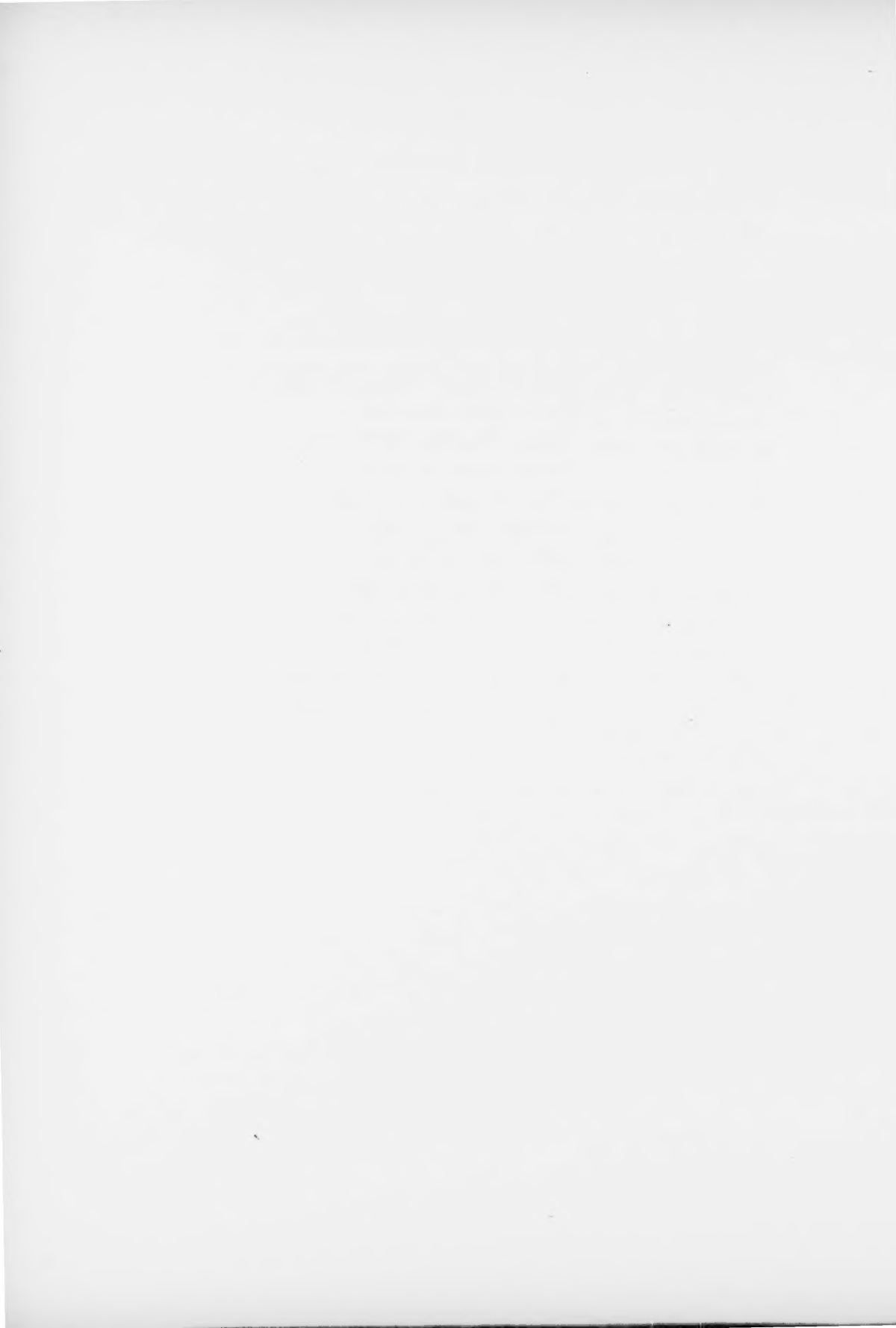
The trial court also found that at the time of the incident a "reasonable police officer" in Respondents' position could have believed his conduct was lawful. For all of the foregoing reasons, the defense of qualified immunity protected the Respondents from liability in this case and the District Court correctly entered a judgment NOV on Petitioners' claims under Section 1983. *Anderson, supra*.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

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A1

APPENDIX

EXCERPTS OF TRIAL TRANSCRIPT

[TESTIMONY OF JOHN MASON BY WAY
OF DEPOSITION]

* * *

[257] Q. Would the command officers have the authority to require an officer to come downtown in a police vehicle instead of their own vehicle?

A. If they felt that was appropriate, yes.

Q. Without placing them in custody?

A. Correct.

Q. So they could require them to come downtown in a police vehicle without placing them in custody?

A. Correct; yes.

Q. And they would also have the authority to refuse to let them come down in their own transportation vehicle?

A. If they felt that was appropriate, yes.

Q. And then you started to talk about reading them their rights. Are you telling me at some later time they would be?

A. If there were found—

Q. If they?

A. Yes, It's a typo.

Q. Yeah.

A. Shall I read it as they?

Q. They, yes.

A. If they were found to be a suspect or if they were focused upon as a suspect as a result of that interview or interrogation, then they should properly be read their constitutional rights against self-incrimination.

Q. What is the source of that authority, that authority to require [258] an off-duty police officer to come downtown for questioning against his will?

A. What is the source of it?

Q. Yes, sir.

A. I'm not sure that I can point to a direct section of the division manual. I think it is inherent in the responsibility of the law enforcement organization and their rights to conduct the business of that association that they have—the administration has the authority to compel a police officer to report to the station house, answer questions, submit to an interview or interrogation with regards to his performance of duty.

MR. ZOLL: Thank you.

THE COURT: Is that all?

MR. ZOLL: That's all Your Honor.

THE COURT: Thank you.

[399] [TESTIMONY OF FRANK STILES]

* * *

Q. Were you called on from time to time to remove yourself from that department or unit and perform other functions?

A. Yes.

Q. And is that what happened in this case?

A. Yes.

Q. Where you born and raised?

A. Toledo, Ohio.

Q. Did you attend school here in Toledo, Ohio?

A. Yes, I did.

Q. Where did you go to school?

A. I went to Waite High School on the east side.

Q. Graduate from Waite High School?

A. Yes.

Q. What year did you graduate?

A. I believe 1957 or '58. Fifty-eight I think.

Q. How soon thereafter did you join the Toledo police division?

A. Went to the Army for two years and—well, '58, then I joined the police department in 1965, April the 6th.

Q. On the evening in question, do you recall meeting with Chief Vetter relative to the interview of police wagon crews?

A. Yes. It was actually in the afternoon, late afternoon.

Q. Would you describe to the jury what happened at that time?

A. I was advised by Lieutenant Roberts that he wanted my assistance on the City Park investigation and that Chief Vetter [400] had instructed him to tell me that and they were going to have a meeting, and I went down to Chief Vetter's office which is located on the same floor

as the Investigative Services Bureau, and at that time, I went in and I believe Chief Vetter was there, Sergeant Navarro, and Lieutenant Roberts. I believe Sergeant Burpee was there at one point. People were coming in and out so—but I remember those people being there during parts or all of the conversation.

Q. Was your mission described to you at that point?

A. Yes, it was.

Q. What was that mission to be?

A. I had been involved to some extent prior to that particular day, the day before. I had actually gotten involved through Lieutenant Roberts. He had asked me to go over to communications and listen to all the dispatcher tapes and check the daily sheet and also the cards for activities of the wagon crews in the area of the City Park between midnight on September 3, 1986, until, 03:30 hours that same date.

Q. Did that investigation correlate with your mission of September 24th?

A. Yes, it did.

Q. And how was that described to you, that is, your job on September 24th by Chief Vetter or others?

A. Chief Vetter described to us at that time that he wanted all the wagon crews interviewed, and he instructed Sergeant [401] Navarro and myself specifically to start with the wagon crew that had worked in that area that night, being Officers David O'Brien and Charles Nearhood.

Q. I'm going to show you a couple exhibits that have been shown to Mr. Zeller marked Exhibits M, N, and O, and I would like you to take an opportunity to review those and then I will ask you a question or two about them.

A. Yes, I recognize them.

Q. What is the first document described as Exhibit M?

A. The first document is a list of all the wagon crews that worked that particular evening on September 3rd.

Q. Who prepared that?

A. I prepared this to give to the other men who were going to interview these people to assist them with that interview.

Q. Was the intent of that evening to touch bases with all those police officers?

A. My understanding it was, yes.

Q. How many police officers are listed there? Count them if you care to.

A. There's eighteen; nine crews.

Q. How many individual officers were you going to have contact with that night as far as you know?

A. We were assigned, first of all, to talk to Officer O'Brien and Officer Nearhood and then we were going to talk to as many officers as we could. We were going to split that up as the time [402] progressed, so there wasn't any specific number we were assigned to the other ones except those two we start out with. We were also going to talk to other people during that night as time permitted.

Q. Did you, in fact, talk to other police officers?

A. I did.

Q. By name do you recall them?

A. Yes. Wayne Onstwedder.

Q. Any others?

A. That's only three that I talked to that night.

Q. Would you look at Exhibit N and describe that in general to the jury?

A. Yes. This is a copy of what we call dispatcher cards. There's four of them exhibited on this exhibit.

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Q. And what are those relative to?

A. These are relative to the wagon crews that were working that particular area and events that occurred with those wagon crews on September 3rd during that period of time, midnight and 03:30 hours.

Q. Any particular wagon crews that those dispatch cards refer to?

A. There's more than one. The Officer O'Brien and Nearhoods' wagon crew, 7 Nor 57, there's also 2 Charlie on this particular one.

*** * ***

[296] [TESTIMONY OF RONALD NAVARRO]

* * *

Q. Sergeant, state your full name for the record, please?

A. I'm Sergeant Ronald Navarro.

Q. And your address?

A. 4204 Hurley, Toledo, Ohio.

Q. And your place of employment, please, sir?

A. City of Toledo, Division of Police.

Q. How long have you been employed with the Police Department?

A. Fifteen years today.

Q. Now, Officer, did there come a time when you became aware of an incident which had occurred in the area of a park in the City of Toledo known as City Park; did there come a time when you became aware of an incident that occurred in September of 1986?

A. Yes, sir. On September 15th, I believe it was, Chief Vetter came to the homicide office and assigned the felonious assault investigation to me.

* * *

[310] Q. Did you have any suspects at this particular time, Sergeant?

A. No, I didn't—well, in the original crime report, Mr. Wright indicated to Emma Jean Adams in her home when she—she's the original person that found him. He told her that four kids had taken his clothes and beat him up. His reply to him was, "You're lying. You're lying. What really happened to you?" He said, "I'm telling you four kids beat me up." And she called the police. They took him to the hospital.

Q. So as you're undertaking to interview all of the wagon crews or at least those that were assigned to you, you had this information at hand at the time, didn't you?

A. Yes.

Q. And how was the matter of interviewing all of the wagon crews divided up; were others besides you involved in this endeavor, Sergeant?

A. Sergeant Burpee was ordered to stay. I was ordered to stay. Sergeant Frank Stiles was ordered to stay.

Q. What date is this, please?

A. On the 24th.

Q. September 24th of '86, right?

A. Yes.

Q. And you say you were ordered to stay. For what specific purpose?

[311] A. To interview all the wagon crews.

Q. Was that the same with the other officers as well, they were ordered to stay, was that your testimony?

A. Yes. Well, they were probably asked to stay but I was ordered to stay. It was my anniversary. I didn't want to stay.

Q. But you were nevertheless ordered to stay?

A. Yes, and I did.

Q. Did you have plans that evening?

A. Oh, yes, big plans.

Q. You were going to dinner, were you?

A. Yes.

Q. What occurred next in the course of your investigation?

A. Well, Chief Vetter had indicated that we were going to have to pick up Officer Nearhood and Officer O'Brien. We went out there, I guess it was probably 5:00, 5:20, went down to the desk, uniform desk, and they have a Rolodex with all the officers' addresses—I don't know where they live—got their addresses and phone numbers and went out to pick them up.

Q. Do you know whether they were on or off duty?

A. They were off duty.

Q. You had determined that, correct?

A. Yes. They were on days off. It was indicated in Chief Vetter's office that, you know, why don't we just call them up and have them come in. They said they're on days off. We've got to expedite this thing. We have to have these people interviewed [312] immediately. It's new information. We got to get it taken care of.

Q. And what was—did you undertake to do this by yourself or was there someone else with you at the time?

A. Frank Stiles was told to come with me.

Q. And what did you understand the purpose of interviewing Officers Nearhood and O'Brien to be at that point?

A. What was the purpose? To go over the information that—well, when Frank went over the dispatch tickets, there was other calls that Detective Wilbur had missed. I think it was one or two that Chuck and Dave had been to. Just to find out more information from them, maybe possibly they came across the victim or ran across Ed White during their tour of duty.

Q. So between you and Sergeant Stiles, you determined that there were some additional questions to ask Officers Nearhood and O'Brien?

A. Oh, yes.

Q. And would you state whether or not you were aware that they were the crew assigned to that district by the way?

A. How did I find that out?

Q. Were you aware of that fact?

A. Yes.

Q. Do you know when they had—or when they were expected back to work Sergeant?

A. I believe in the office, Chief Vetter found out that they [313] were due back in two days. He said that was too long to wait. We've got to talk to the officers

tonight. In fact, I guess the majority of the wagon crews were off. Probable three-quarters of them were off the next couple days. It was too long. We couldn't wait two more days. We had to get all the interviewing done.

Q. And what occurred next then on the 24th?

A. Well, we went out to, I believe, an apartment on South Airport Highway near Byrne. I don't remember what it was, whether Officer O'Brien had listed in the Rolodex where he lived. I know he testified earlier that he indicated in the academy that he had given—

MR. ZOLL: Objection, Your Honor.

THE COURT: Sustained.

A. Well, anyway, I went over there, found out that he didn't live at that address. We left and we proceeded to Chuck Nearhood's house in Maumee, Ohio.

Q. Now, how were you dressed at the time, Sergeant?

A. In sport coat and trousers.

Q. All right.

A. Tie.

Q. Do you recall how about Sergeant Stiles?

A. Same attire.

Q. What sort of a car did you go in?

A. I was assigned a Volare. It was a black Volare.

* * *

[315] A. Okay. Well, whatever. Sergeant Stiles and I then walked to our car and waited for Officer Nearhood.

Q. Did you go back to the house at all?

A. No.

Q. So how long were you at the front door?

A. Not very long, couple minutes, two or three, I don't know. It wasn't very long.

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Q. Did you indicate to Officer Nearhood that he was being placed under arrest?

A. Oh, no; no.

Q. Why not?

A. Because he wasn't a suspect and I didn't have a warrant.

Q. Was it your intention—what was your intention when you went out there?

A. My intention was to follow what Chief Vetter had said, to go pick him up, to bring him in, to go interview him.

Q. Interview him for what purpose?

A. Interview him in regard to his activities that night from the dispatch cards that Sergeant Stiles had obtained on the 23rd.

[140] [TESTIMONY OF CHARLES NEARHOOD]

* * *

Q. (By Mr. Davis) All right. Says: "Compliance with lawful orders. The division is an organization with a clearly defined chain of command. This is necessary because obedience of a supreme lawful command is necessary for the safe and prompt performance of law enforcement operations. The most desirable means of obtaining compliance are recognition and of reward of proper performance and the positive encouragement of a willingness to serve, however, discipline may be necessary where there is a willful disregard of lawful orders, commands or directives." You are familiar with that?

A. Yes.

Q. And so you went with Sergeant Stiles and Sergeant Navarro when they ordered you back to work, didn't you?

A. Yes, I did.

[141] Q. Now, you also understand—incidentally, you worked for the Maumee police department prior to Toledo, too, didn't you?

A. Yes, I did.

Q. How long was that?

A. About two-and-a-half years.

Q. When this unfortunate incident in City Park had occurred, you had been a police officer with the City of Toledo little less than a year, am I correct?

A. Well--

Q. With the City of Toledo, I mean?

A. It would have been—well, when the incident itself occurred on the 3rd of September?

Q. Um-hum.

A. It would have been less than a year, yes.

Q. And in fact, I guess you said that this was your first night in that territory?

A. In that beat, sector.

Q. District, yes. Now, Officer, with your police background with the Maumee police department and with the Toledo police department, you understand that as a police officer, you have a duty to uphold the law 24 hours a day?

A. Yes, I do.

Q. You don't contend, do you, Officer, that the City of Toledo has no right whatsoever to call you back to duty, do you?

A. No, I don't contend that at all.

[142] Q. In fact, they have that right, don't they?

A. According to that, yes.

Q. And you would agree with me, would you not, Officer, that this incident which occurred in City Park was a matter of great import to the community of the City of Toledo?

MR. ZOLL: Your Honor, I'm going to object. I think it calls for some kind of conclusion. I'm not sure it's proper.

THE COURT: Overruled. Go ahead.

A. Would you state the question again?

Q. Wasn't this incident which occurred in City Park on September the 3rd, the morning of September 3rd of 1986, wasn't that a matter of greate concern or import to the community, to the people of this City of Toledo?

MR. ZOLL: Again, object.

THE COURT: All right. Overruled.

A. I would say to the news media that was covering it and the people that covered it, yes, it was.

Q. You don't think that it was important to the citizens of the City of Toledo?

A. I cannot speak for the citizens. I can only speak for what I saw in the news media. I would say that the citizens were interested in it, yes.

[169]

* * *

Q. Well, who was arguing then on your behalf?

A. Mike Collins was.

Q. Who was he arguing it with, do you recall?

A. He went into the room with Lieutenant Roberts and Sergeant Stiles, and I don't know the conversation that went through on that one.

Q. All right. And in fact, was it the vice-president of your union who came out with the overtime report and asked you to sign it then or was it Lieutenant Roberts?

A. It was Mike Collins.

Q. And at this point, you had officially requested overtime from the City of Toledo, correct?

A. Through Mike Collins, yes, sir.

Q. All right. Overtime for police officers—how many hours of overtime did you claim when you submitted your report requesting overtime from the City of Toledo?

A. I would have to look at the slip, but I believe it said—it was written on there 17:45 to 20:45.

Q. That's three hours, am I correct?

A. Yes, sir.

Q. So I take it that part of that three hours was the forty-five minutes or an hour you spent looking for Officer O'Brien then, am I correct in that also?

A. Yes, sir.

[170] Q. Part of that overtime was the half an hour you were sitting in the hall talking to your union steward, am I correct in that also, Officer?

A. Yes, sir.

Q. And what is overtime, time-and-a-half?

A. Yes, sir.

Q. And isn't it a fact that by virtue of your collective bargaining agreement, Officer, that the minimum that you can be compensated for is actually four hours?

A. I don't understand what you're saying.

Q. Doesn't your contract call for you to be compensated a minimum of four hours?

A. I would have—I don't know the differentiation between the two-hour court call. I would have to look at that, sir.

Q. Now, while you were in the hallway talking to Ann Smith, did anyone tell you not to talk to her?

A. No, sir.

Q. You had absolutely free access to her, is that correct?

A. Yes, sir.

Q. You have been a police officer with the City of Maumee how long, sir?

A. City of Maumee, approximately two-and-a-half years.

Q. And at the time you had been a City of Toledo police officer approximately one year, am I correct?

A. Yes, sir.

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[276] [TESTIMONY OF DAVID M. O'BRIEN]

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Q. During the course of the evening, were there other things that you might have been concerned with in terms of your probationary status as things you might have done wrong in the way of ordinary police routine?

A. No, I don't believe so.

Q. But you do agree, don't you, that as a police officer, you are required to follow the orders of a superior officer?

A. Yes.

Q. And clearly, Sergeant Stiles and Navarro were superior in rank to you, were they not?

A. Yes, sir. Yes. They outranked me.

Q. And Officer, you don't disagree with the concept, do you, that your employer, the police department, has the right to call you back to duty to elicit certain information, do you agree with that?

A. If done properly, yes, they have—they may do that.

Q. What about if they come and say we need more information from you, we would like you to come downtown with us?

A. Well, I prefer call first which there was a possibility except that I was not given that right. It was not a "will you please come with us."

Q. You're saying you have the right to be called first?

A. No. They could have done that first.

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[284] Q. Members of the Toledo Police Patrolmen's Association?

A. Yes.

Q. And, Officer, isn't it true that you claim that some of these comments occurred after that piece of newsprint that came out?

A. They occurred before that and continued on through that, yes.

Q. For how long?

A. They still go on today.

Q. Have you ever sought any sort of medical attention for—

A. No, I haven't sought any medical attention.

Q. Any sort of psychological attention?

A. No, I didn't.

Q. Have you lost any money as a result of this?

A. No, I don't believe I have.

Q. Did you in fact receive overtime?

A. Yes, they did give me overtime.

Q. Well, you mentioned that you would ask for it going down in the car, and didn't you ask for it at the end of your interview when Officer Collins was around also?

A. I didn't ask for it. I was just—after they took me out of the personal assault unit, someone handed me one in the hallway and said to sign it.

Q. And didn't you inquire of anyone as to whether you were going to get overtime at that point?

[107] A. At that time, they had the card in my hand, so I just signed it.

Q. You made made no remark about it at all?

A. Not really, no.

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